IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.T.SANKARAN

WEDNESDAY, THE 6TH DECEMBER 2006 / 15TH AGRAHAYANA 1928

Crl.Rev.Pet.No. 46 of 2001()

CRA.307/1998 of ADDL.SESSIONS COURT-I, KOZHIKODE
CC.736/1995 of J.F.C.M-I, KOYILANDY.
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REVN. PETITIONER/APPELLANT/ACCUSED:

K.C. KARUNAKARAN NAIR,
VADAKKAYIL HOUSE,
KARUVANGAD AMSOM, PERUVATTOOR DESOM,
KOYILANDY TALUK.

BY ADV. SRI.R.K. MURALEEDHARAN

RESPONDENTS/RESPONDENTS/COMPLAINANT & STATE:
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1. EROTH KUNNAMMAL RAJAN,
CHAMBAKOTTU, KARUVANGAD AMSOM,
KARUVANGAD DESOM, KOYILANDY TALUK.

2. STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

R1 BY ADV. SRI.M.K.SUMOD
R2 BY PUBLIC PROSECUTOR ADV. SHRI KAMMAPPU.

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 06/12/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.T. SANKARAN, J.

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CRL. R.P. 46 OF 2001

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Dated this the 6th December, 2006

O R D E R

The petitioner, who is the accused in C.C. No. 736 of 1995 on the file of the court of the Judicial Magistrate of the First Class, Koyilandy, was convicted for the offence under section 138 of the Negotiable Instruments Act. The petitioner was sentenced to undergo simple imprisonment for a period of six months and to pay fine of Rs. 25,000/- and in default of payment of fine, to suffer simple imprisonment for a period of three months. The trial court also directed that out of the fine amount, on its realisation, a sum of Rs. 20,000/- shall be paid to the complainant by way of compensation. On appeal by the accused, the appellate court confirmed the conviction, but the sentence was modified. The petitioner/accused was sentenced to undergo simple imprisonment for a

period of one month. The appellate court also directed the accused to pay a sum of Rs. 20,000/- as compensation to the complainant under section 357(3) of the Code of Criminal Procedure.

2. The case of the complainant is that the accused borrowed a sum of Rs. 20,000/- and in repayment of that amount, the accused issued Ext.P1 cheque. On presentation of the cheque , it was dishonoured on the ground “payment stopped by the drawer”. Ext. P3 lawyer notice was issued to the accused and it was received by him. The accused sent Ext.D5 reply notice.

3. The complainant was examined as P.W.1 and the Manager of the bank was examined as P.W.2. The accused was examined as D.W.1. The case of the accused is that he had kept four signed cheque leaves in blank form in the almirah and they were stolen from the almirah. When it was found that the cheque leaves were stolen, intimation was given to the bank to stop payment. The signature in Ext. P1 cheque is admitted. In an attempt to prove the defence case, he produced Exts. D1 to D5. Ext.D1 is the pass book of the accused and Ext. P1 cheque was issued in

respect of that account. Exts. D2 to D4 were produced to show that the accused used to stay at Palakkad frequently.

4. The trial court disbelieved the case put forward by the accused. Ext. P6 ledger extract in respect of the account of the accused shows that at no point of time there was cash balance exceeding Rs. 300/-. The trial court stated that this was the state of affairs for long number of years except on two occasions when cheque or Demand Draft was presented for collection. It was noticed that even those amounts were withdrawn by the accused immediately after collection. This will improbabilise the case of the accused that blank cheque leaves were kept in the almirah for the purpose of facilitating his family members to draw amounts. The trial court also held that the evidence of D.W.1 cannot be relied upon. Reasons for that conclusion are stated in paragraph '9' of the judgment. The trial court relied on the evidence of P.W.1 and it was held that his evidence is supported by documentary evidence and evidence of P.W.2. It was held by the trial court that the complainant had satisfactorily proved all the necessary ingredients to attract Section 138 of the Negotiable Instruments

Act. The appellate court also considered the documentary and oral evidence in detail and concurred with the view taken by the trial court . No grounds are made out for interference under section 397 of the Code of Criminal Procedure.

5. Counsel for the petitioner submits that the petitioner is aged more than 80 years and that it will be very harsh to sentence him to suffer imprisonment. Learned counsel also relied on the decision in **Anilkumar vs. Shammy** (**2002(3) KLT 852**) and contended that at any rate the sentence of imprisonment may be reduced to imprisonment till the rising of the court, in case this court is not inclined to accept the contentions put forward by the accused. Counsel also submitted that a reasonable time may be granted to the petitioner to pay the amount of compensation. I am inclined to accept the submission made by the counsel for the petitioner in this regard. In the facts and circumstances of the case, it would be just and reasonable to impose a sentence of imprisonment till the rising of the court instead of imprisonment for a period of one month. I am also inclined to grant six weeks' time to the petitioner to pay the amount of

compensation.

6. In the result, the Crl. Revision Petition is allowed in part in the following manner:

i) The conviction of the petitioner is confirmed.

ii) The petitioner is sentenced to undergo simple imprisonment till the rising of the court.

iii) The petitioner shall pay a sum of Rs. 20,000/- as compensation to the first respondent/complainant under section 357(3) of the Code of Criminal Procedure.

iv) In default of payment of compensation, the petitioner shall undergo simple imprisonment for a period of one month.

v) The petitioner is granted six weeks' time to pay the amount of compensation.

K.T. SANKARAN,
JUDGE.

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K.T. SANKARAN, J.

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CRL. R.P. No. 46 OF 2001

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Dated this the 6th December, 2006

O R D E R